

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

Docket No.: 2019-169-E

IN RE: Duke Energy Progress, LLC's
Establishment of Net Energy Metering Tariff in
Compliance with H. 3659

**PETITION TO INTERVENE
ON BEHALF OF
ALDER ENERGY SYSTEMS, LLC**

(OUT OF TIME)

Alder Energy Systems, LLC, pursuant to S.C. CODE ANN. REGS. § 103-825, requests that the Public Service Commission of South Carolina (the "Commission") permit it to intervene in the instant proceeding out of time and states the following.

INTRODUCTION

1. Duke Energy and various intervenors recently published their intent to request the Commission to approve a settlement relative to net energy metering for distributed solar in South Carolina. The parties deserve commendation for their effort; however—on information and belief—the anticipated settlement does not resolve all issues required by the Energy Freedom Act. Alder Energy requests to intervene in the instant action to address issues left open by the anticipated settlement, namely: how S.C. CODE ANN. § 58-40-20 impacts net metering for South Carolina's commercial and industrial customers. Alder's intervention is thus to serve the public interest of commercial and industrial access to solar; it is not for the purpose of, nor will it cause, delay or prejudice. On these grounds and others, Alder respectfully requests the Commission enter an order permitting it to intervene here, and in all other related proceedings (as requested by independent petitions).

BACKGROUND

A. Posture

2. This proceeding was opened on May 21, 2019 to establish the net energy metering tariff of Duke Energy Progress, LLC, as required by S.C. CODE ANN. § 58-40-20(B). A parallel proceeding exists for Duke Energy Carolinas, LLC at docket 2019-170-E. Duke Energy Progress, LLC is hereinafter referred to as “DEP” and as “Duke Energy,” when referenced together with Duke Energy Carolinas, LLC.

3. Order 2020-621, dated September 16, 2020, indicates the Commission intends to comply with S.C. CODE ANN. § 58-40-20(F) by using the instant proceeding to adjudicate DEP’s ‘Solar Choice Metering Tariff’ (“Solar Choice Tariff”). The same order (as amended) establishes a procedural schedule requiring intervenor testimony on December 7, 2020 and a final hearing on January 20, 2021.

4. The Commission did not set an intervention deadline; however, Alder frames the instant petition as out of time—in an abundance of caution—in light of the procedural schedule set by Order 2020-621. It is plausible the Commission intended the September 17, 2020 intervention deadline for docket 2019-182-E to carry over here. (*See* Order 2020-570) (setting procedural schedule for docket 2019-182-E; requesting proposed procedural schedule for the Solar Choice Tariff proceedings; and requiring them to occur in separate dockets).

5. No testimony has been filed by any party in this docket.

B. Proposed Settlement

6. On September 21, 2020—less than three weeks from the day of this filing—Duke Energy and intervenors informed the Commission they resolved matters germane to the Solar Choice Tariff by agreement. (*See e.g.* ‘Letter Regarding Stakeholder Agreement and Press Release,’

September 21, 2020, Doc. 294192) (“Proposed Settlement Terms” or “PST []” in citations).¹ The importance of this highly-publicized event is not understated. It is likely to establish critical NEM policy in the state and move South Carolina beyond the limitations (perceived or otherwise) of the Distributed Energy Resources Program Act (“Act 236”).

7. The Proposed Settlement Terms are limited to residential NEM. (PST 2) (“The Solar Choice Metering tariff will apply to all interested **residential** customers applying on or after January 1, 2022.”) (emphasis added); (PST 5) (describing the tariff’s bill credit as applicable to “**small** customers”) (emphasis added). The Proposed Settlement Terms vaguely address a non-residential “offering,” but the terms are unclear. (PST 3.) That section discusses a “Solar Choice Metering *rider*,” but the remainder of the terms—expressly limited to “residential customers”—apply to a “Solar Choice Metering *tariff*.” (*Id.*) There is no suggestion that the inherent difference is semantics.

8. The Proposed Settlement Terms developed from various stakeholder meetings and two workshops that occurred in March and April this year. Alder Energy was not a participant in those sessions and learned they took place only after publication of the Proposed Settlement Terms.

C. Alder Energy

9. Proposed intervenor, Alder Energy, has developed, designed and installed solar photovoltaic systems from its Charleston, South Carolina headquarters for over a decade. The company has completed over five hundred distribution-scale solar projects in the southeastern United States and mid-Atlantic, ranging in capacity size from 2kW to 8MW. These projects would not have been built without NEM policies.

10. Alder Energy is a member of the South Carolina Solar Council, the South Carolina Solar Business Alliance, Solar Energy Industries Association, and the Coalition for Community Solar Access. The company has maintained an active delegate in these organizations since 2011, 2012,

¹ The same filing was made in docket 2019-170-E (Doc. 294193).

2016 and 2018. It also participated in stakeholder meetings leading to the passage of Act 236 and the Energy Freedom Act (“Act 62”). That is to say, Alder has maintained an active place in South Carolina solar policy and wishes to intervene here to continue its work.

ARGUMENT

❖ THE COMMISSION SHOULD ALLOW ALDER ENERGY’S INTERVENTION IN THIS PROCEEDING BECAUSE IT IS IN THE PUBLIC INTEREST; WILL NOT DELAY THE PROCEEDING; AND WILL NOT PREJUDICE ANOTHER PARTY.

11. The Commission has a long standing history of permitting intervention out of time in electric dockets. (*See e.g.* Orders 2019-88, 2018-608, 2014-643, 2013-755, 2013-690, 2013-507, 2013-732, 2005-725.) The Commission’s discretion in granting intervention considers: (1) the public interest, (2) potential delay and (3) prejudice, among other factors. *See e.g. id.* These factors are balanced against the Commission’s policy “encouraging maximum public participation in issues before the Commission . . . [.]” even in circumstances where the petition is raised out of time. (Order 2005-725, Docket 2005-270-G, Dec. 16, 2005.)

12. (1) *Public interest.* South Carolina’s commercial and industrial (“C&I”) electric customers enjoy a legally-protected right to access solar energy. *See* S.C. CODE ANN. §§ 58-41-05 and 58-41-40 (Act 62 intended to “support access to solar energy . . . for *all* South Carolinians” and directing the Commission to consider “direct investments *by customers* for their own energy needs and renewable goals.”) (emphasis added). Alder Energy’s participation in this proceeding is in the public interest because it ensures the state’s C&I customers can effectively implement their right to access distributed solar through NEM policies. No other intervenor represents this important interest for both C&I customers. Alder’s market position also gives it an independent and substantial interest in the outcome of this proceeding. (*See infra* ¶¶ 9-10.)

13. (2) *Potential delay.* Alder’s participation is not intended to and not expected to delay the proceeding, but merely to support these important interests. The Proposed Settlement Terms

provide that Duke Energy will continue to engage with stakeholders through November 2, 2020—the same day Duke Energy’s testimony is due. (PST 2, 3.) The parties have at least until then to consider Alder’s position.

14. (3) *Potential prejudice.* Alder’s participation in this proceeding will not prejudice the existing parties for at least two reasons. No party has filed testimony and the hearing is set far enough in advance to permit other parties time to respond to Alder. Second—if Alder’s read of the Proposed Settlement Terms is correct—the company’s position would be outside the reach of the terms it contemplates. This, after all, is the crux of Alder’s concern and reason for intervening—to ensure C&I access to solar.

15. The Commission should excuse Alder’s late intervention on grounds the company was not aware of these proceedings and was not a participant in the stakeholder sessions, despite its known market position. Alder did not learn of the Proposed Settlement Terms, and its lack of clarity and efficacy for C&I customers, until it was published by the parties on September 21, 2020.

16. If intervention is granted, Alder will ask the Commission to consider how S.C. CODE ANN. § 58-40-20 impacts the efficacy and legality of: (1) the utilities’ parameters for solar system size and (2) demand charges and grid access fees within NEM tariffs/riders, among other issues.

17. On these and other grounds, Alder requests the Commission permit it to intervene. The Commission will not otherwise enjoy minimum, much less “maximum,” public participation on the important issue of NEM in South Carolina, particular for C&I customers. (*See* Order No. 2005-725.)

18. Pursuant to S.C. CODE ANN. REGS. § 103-804(T) Alder is represented by the following counsel in the instant proceeding:

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Alder Energy conferred upon its counsel authority to accept service of all papers and filings for purposes of the instant proceeding.

WHEREFORE Alder Energy respectfully requests the Commission enter an order permitting it to intervene in the instant proceeding and all other dockets intended to establish the utilities' Solar Choice Tariffs.

Respectfully submitted,

October 11, 2020

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Attorneys for Alder Energy Systems, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on October 11, 2020 the undersigned filed the foregoing petition with PSC's DMS and further served a copy upon the recipients on the attached service list by electronic mail.

By: /s/ R. Taylor Speer
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